

STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE HONORABLE LISA GORCYCA
Oakland County Circuit Court Judge

Docket No. 152831
Formal Complaint No. 98

Respondent.

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**THE HONORABLE LISA GORCYCA'S CORRECTED
PETITION TO REJECT OR MODIFY, IN PART, THE RECOMMENDATIONS
OF THE JUDICIAL TENURE COMMISSION**

Now comes Respondent, Honorable Lisa Gorcyca, by and through her attorneys, VANDEVEER GARZIA, P.C. and MILLER CANFIELD, P.C., and pursuant to MCR 9.224(A), petitions this Court to reject or modify the November 14, 2016 Decision and Recommendation for Order of Discipline of the Judicial Tenure Commission for the following reasons:

1. The Commission committed error when it decided that Judge Gorcyca abused her contempt power, because such decision was not supported by the record.
2. The Commission committed error when it decided that Judge Gorcyca's demeanor on the record constituted misconduct despite the fact that her conduct was

not persistent and represented, at worst, one incident of frustration with persons appearing before the Court.

3. The Commission committed error when it assessed costs against Judge Gorcyca despite the fact that it found she did not make misrepresentations to the Commission, Commission's Investigators or the Master.

4. The Commission misapplied the *In re Brown* factors, and when appropriately applied, this Court should assess no sanction against Judge Gorcyca, or in the alternative, impose no more than a public censure.

Respectfully submitted,

VANDEVEER GARZIA, P.C.

Dated: December 22, 2016

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**THE HONORABLE LISA GORCYCA'S BRIEF IN SUPPORT OF CORRECTED
PETITION TO REJECT OR MODIFY, IN PART, THE RECOMMENDATIONS
OF THE JUDICIAL TENURE COMMISSION**

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STATEMENT OF QUESTIONS PRESENTED

1. Did the Judicial Tenure Commission commit error when it decided that Judge Gorcyca abused the contempt power, where its findings represented, at worst, errors of law that are beyond the jurisdiction of the Commission?

Respondent answers: **Yes.**

2. Did the Judicial Tenure Commission commit error when it decided that Judge Gorcyca abused the contempt power, where it improperly characterized Judge Gorcyca's actions as "targeting children" without any supporting evidence, and further when the evidence showed that Judge Gorcyca used the contempt power as a last resort and only after other attempts to modify the children's behavior had failed?

Respondent answers: **Yes.**

3. Did the Judicial Tenure Commission commit error when it recommended discipline against Judge Gorcyca where her conduct was not persistent and did not prejudice the administration of justice, but rather represented, at worst, one incident of frustration with persons that were defiant before the Court?

Respondent answers: **Yes.**

4. Did the Judicial Tenure Commission commit error when it assessed costs against Judge Gorcyca despite a finding that she made no misrepresentations to the Commission, Commission's counsel, or the Master?

Respondent answers: **Yes.**

5. Did the Commission commit error when it improperly weighed the *In re Brown* factors and misapplied the facts to find that she "targeted the children," among other things?

Respondent answers: **Yes.**

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

1. Statement of Proceedings.

This Judicial Tenure Commission proceeding was commenced pursuant to a Formal Complaint filed December 14, 2015. The matter arose out of circumstances that occurred on June 24, 2015 in the *Eibschitz-Tsimhoni v Tsimhoni* case. On that date, in response to direct contemptuous behavior in the view and presence of the court, the Honorable Lisa Gorcyca appointed accomplished and experienced attorneys to represent LT, RT, and NT in a civil contempt hearing due to their failure to participate in parenting time with their father, Omer Tsimhoni. Following hearings at which no attorney or party objected, Judge Gorcyca held LT, RT, and NT in civil contempt.

The Judicial Tenure Commission ("Commission") asserted two counts in its complaint: (1) That Judge Gorcyca was intemperate, impatient and undignified in her demeanor on the record on June 24, 2015; and (2) That Judge Gorcyca made misrepresentations to the JTC in her response to the Notice of Allegations (28-day letter).

Motions were heard by the Master on May 27, 2016. His rulings on the motions denied Judge Gorcyca the opportunity to present expert witnesses that would have properly framed the issues before the Master and which would have resulted in different findings of fact and conclusions of law. This included a recognized expert on contempt law in Hon. Michael Warren of the Oakland County Circuit Court. He would have testified that there was no law in Michigan that prohibits holding children in civil contempt and that in his opinion, this hearing had all of the hallmarks of a properly conducted civil contempt proceeding.

Further, The Master denied the Respondent the opportunity to call Paul Fischer on the issues regarding his interference in the underlying action on behalf of the Israeli Consul General (**Appendix 14**, Pleading Index 23) and the basis of his not believing Judge Gorcyca's answer in the response to the 28-day letter. Finally, despite the fact that Judge Gorcyca's character had been attacked in the very complaint in this matter, he precluded character witnesses willing to testify about her propensity for truth and veracity at the trial. (**Appendix 15**, Pleading Index 22).

The Examiner and co-Examiner, Paul Fischer and Margaret Rynier, prosecuted the matter through the trial on May 31, 2016 and June 1, 2016 before the appointed Master. The Master issued his report outlining his findings of fact and conclusions of law on July 1, 2016. Following that trial, the Master issued a recommendation to the Commission that made several unsupported findings of fact.

Judge Gorcyca filed timely objections to the Master's report before the Commission. (**Appendix 21**, Pleading Index 31). Oral argument on the objections was held before the Commission on October 10, 2016. Following oral argument, the Commission issued its Decision and Recommendation for Order of Discipline on November 14, 2016. In that Decision, the Commission exceeded its jurisdiction by ruling that Judge Gorcyca's alleged legal errors in conducting the contempt hearings was judicial misconduct.

The Commission appropriately ruled that Judge Gorcyca did not make misrepresentations to the Commission in her response to the 28-day letter, but nevertheless opined that her statements to the Commission were "misleading" and awarded costs to the Commission for proceeding against her.

The Commission filed the record of proceedings in this matter on November 30, 2016.

2. Statement of Material Facts.

The underlying case in this matter has been and continues to be a long, complex, and very acrimonious battle between two divorced parties, Maya Eibschitz-Tsimhoni and Omer Tsimhoni. The matter was pending before Judge Gorcyca for over half a decade. The Register of Actions alone for this case is over fifty screen pages long, and twenty-seven printed pages. (**Appendix 2**, Exhibit E1). When it was assigned to Judge Gorcyca, there were more than forty court hearings held and more than one hundred pleadings filed with the court. This was, by far, the longest-standing post-judgment divorce case on Judge Gorcyca's docket.

At least thirteen of these pleadings were Motions to Show Cause submitted by the father and/or the Guardian ad Litem against the Plaintiff mother. With the exception of the most recent Show Cause Motion over which Judge Gorcyca presided, each and every one of those motions concerned the mother's and the children's blatant refusal to comply with the court's parenting-time schedules, orders, and directives. In addition to those motions, there have been numerous other motions, reports, and recommendations filed by the Guardian ad Litem with respect to the minor children that are pertinent to Judge Gorcyca's rulings in the underlying case.

The court entered no fewer than seventy-eight separate orders; approximately thirty of which related to the three minor children and predated the June 24, 2015 hearing. The majority of those thirty orders sought to effectuate meaningful parenting

time between the minor children and the father. Many of those orders were ignored or thwarted by the actions of the mother and the children themselves.

The children have been evaluated by, examined clinically by, or had supervised parenting time with no fewer than seven therapists. The mother was represented by sixteen attorneys throughout the course of this case, six of whom entered their appearance *after* the hearing held on June 24, 2015. The father was represented by four attorneys, two of whom entered their appearance after the hearing held on June 24, 2015. The maternal grandmother was represented by two lawyers. The Guardian ad Litem for the three minor children, William Lansat, was appointed on August 25, 2010 and has been continually involved in this case since that date. Friend of the Court Family Counselor, Tracey Rae Stieb, has been involved in the case since its inception. The parenting time supervisor, Art Gallagher, was involved in the case from 2013 to 2015.

The only constant issue in the case has been the children's failure and refusal to participate in parenting time with their father. The crux of the case is the father's allegation of parental alienation perpetuated by mother's efforts to barricade and ostracize the children from him.

The June 24, 2015 hearing arose out of circumstances surrounding the children's lack of participation during parenting time in the court's jury room pursuant to written and verbal orders. That day was not the first time the children were scheduled to have parenting time with their father in Judge Gorcyca's jury room. It should be recognized that parenting time at the court is an extremely unusual remedy that was fashioned in this matter to ensure that the children participate in meaningful parenting time with the

father. In all of Judge Gorcyca's prior cases, this has never been ordered, or even suggested, to occur. In fact, it was not the court but the parties and the Guardian ad Litem who originally fashioned this remedy in August 2014. The court adopted the parties' proposed resolution and signed a stipulated order dated August 20, 2014.

In that August 20, 2014 consent order (**Appendix 3**, Exhibit R41), the parties mutually agreed that parenting time was to be held in Judge Gorcyca's jury room during the following two days: August 21, 2014 and August 22, 2014. Although the children were technically compliant when they appeared at the court on August 21, 2014, their behavior was completely defiant of the court's authority (**Appendix 20**, Report at p. 7; **Appendix 19**, Hearing transcript at pp. 315-17). That event at the court demonstrated to the court that the children had been positioned against their father, and would go to any lengths to disregard the court's directives.

When the mother and children appeared at the court on that day, the children refused to enter the jury room occupied by their father. All three children sat in chairs in the public hallway directly outside Judge Gorcyca's courtroom and blatantly refused, as a group, to participate in any parenting time with their father. They linked their arms together as if anchoring each other, and refused to look at or speak to anyone. All three children refused to even get up from the chairs and enter the jury room where their father and the parenting-time supervisor, Art Gallagher, were patiently waiting.

When Judge Gorcyca was notified of this behavior, she entered her courtroom and observed the children's actions through a window in the courtroom door. Deputies from the Oakland County Sheriff's Office ("OCSO") were called to assist and Judge Gorcyca's staff requested the assistance of Assistant Prosecutor Lisa Harris. She was

called to assist not because she was a prosecutor but because she was good with children. Mr. Lansat, the Guardian ad Litem, likewise made every effort to encourage the children to visit with their father in the jury room. No physical force or touching of the children was used to gain their compliance.

The children refused to acknowledge or respond to the Guardian ad Litem, the deputies, or the assistant prosecutor. All of these authority figures spoke at length and explained to the children the significance of the court orders and why they must be followed. They explained the potential consequences of failing to comply; it was explicitly explained that their refusal to comply could lead to their placement in Children's Village. (**Appendix 19**, Hearing transcript, at p. 321). Further, their mother could be placed in the Oakland County Jail if they continued to refuse to abide by the court's orders.

Despite these efforts, and the court's desire to impress upon the children the importance of following the court's orders, the children continued to ignore the court's clear directives and refused to simply enter the jury room for parenting time with their father. Judge Gorcyca then asked her staff to call Ms. Stieb, the Friend of the Court Family Counselor, to inquire whether she was available to come over and provide guidance to the children. Ms. Stieb's pleas to the children also went unheeded.

Failing in all of these efforts, Judge Gorcyca then entered the hallway to advise the children that they must follow the court's orders. Judge Gorcyca again explained to the children that they, and their mother, could be held in contempt if they continued to refuse to interact with their father. Not once were voices raised nor threats or even

subtle coercion used; only kind rationalization at a child's intelligence level was conveyed.

Despite these attempts, the children refused to enter the room. Judge Gorcyca called the Guardian ad Litem, as well as Lisa Harris, and the children's mother into the courtroom and held a hearing. Lisa Harris argued to the court that what she saw in the children's behavior was "beyond absurd", and that their actions to the court could not be excused. (**Appendix 4**, Exhibit R77). Despite the children's ages at the time,¹ she specifically suggested that the court appoint the children separate attorneys and offered that a contempt hearing could occur that afternoon. The Guardian ad Litem, William Lansat, objected to holding the children in contempt at that time.² Judge Gorcyca declined to hold a contempt hearing, specifically telling the mother that she had to compel the children to participate or that Judge Gorcyca would have deputies from OCSO force the children into the room.

The children eventually, but reluctantly, entered the jury room to begin parenting time with their father. They were accompanied by Mr. Gallagher, Ms. Stieb, and Mr. Lansat. At the conclusion of the parenting time, Mr. Lansat and Ms. Stieb both reported to the court that little progress was made. The parenting time scheduled for August 22, 2014 also went badly. (Exhibit R43). **Throughout the intervening months, the children continued to refuse parenting time ordered by the court and Judge Gorcyca tried several and various less drastic sanctions before resorting to her contempt power.**

¹ At this time, the children were each one year younger than they were at the June 24, 2015 hearing.

² Notably, Mr. Lansat did not object to holding the children in contempt on June 24, 2015, and felt that doing so was in the best interests of the children at that time. (**Appendix 18**, Hearing Transcript, pp. 226-227).

By November 2014, the court requested that the Guardian ad Litem prepare a comprehensive report concerning parenting time problems. Filed on November 3, 2014 in anticipation of a November 12, 2014 hearing, that report and recommendation described intentional interference with the father's parenting time rights by both the mother and the children. (**Appendix 5**). Noteworthy was the reference by Mr. Lansat that the children seemed to be communicating in code and by gestures when others were present, reminiscent of his understanding of the "Manson family" communication tactics. "The children would not answer any adult; they huddled together as if they were sending messages/vibes to each other in some sort of Manson-like behavior." (**Appendix 5**, Exhibit R43). That "Manson" reference became a shorthand reference for the actions of the children throughout the next few months.

In addition, Mr. Lansat, as the representative of the children's best interests to the court, indicated that the time had come for the court to take more serious action to control and modify the behavior of the children. His call in the report was for "draconian measures." The order entered on November 12, 2014 again ordered parenting time, and to resolve the problem of transferring the children to Defendant father, ordered that the transfer would take place at the Oakland County Courthouse so that the court could intervene if necessary. A deputy from OCSO was to be present at the time of transfer. (**Appendix 6**, Exhibit R44).

Despite this order, parenting time did not improve.

On March 4, 2015, the court set a schedule for regular parenting time for the father and noted that parenting time had not improved. The court, trying to communicate *yet again* that the children were required to follow its orders, ordered that

until they complied they were to lose access to electronics, visits with friends and television until they began to communicate with their father. In addition, because the children refused to eat when with their father, the court ordered that they were no longer to be given a replacement meal by their mother. The court essentially grounded the children. (**Appendix 7**, Exhibit R50).

Despite this order, parenting time did not improve.

On April 2, 2015, the parties stipulated to an order that the mother, because of her actions in the failed parenting time, would spend a full day in the Oakland County Circuit Court lockup for contempt. The same order required that the children spend the better part of their spring break from school *at the courthouse* so that the father could exercise parenting time. Most importantly at this time, Judge Gorcyca **ordered the children and their mother to tour Children's Village**. (**Appendix 9**, Exhibit R57).

Despite this order, parenting time did not improve.

Prior to June 24, 2015, Judge Gorcyca had tried many different remedies intended to change the children's behavior and to coerce them to comply with her orders. They continued to refuse to do so.

On June 23, 2015, the parties again appeared before Judge Gorcyca for a review of issues regarding parenting time. Judge Gorcyca was informed that although the children were technically showing up for parenting time, there was no effort on their part to communicate or meaningfully participate in the parenting time sessions. At the end of the hearing, the court again ordered that parenting time, for RT and NT, would take place the next day in the jury room at the court. Parenting time for LT was initially scheduled for July 14, 2015, also in the court's jury room. (**Appendix 10**, Exhibit R61).

On June 24, 2015, the mother arrived late for parenting time and brought all three children with her. During the normal motion call, Judge Gorcyca's secretary informed the court that parenting time in her jury room was not progressing well and was once again being thwarted by the children's refusal to follow the court's orders. Judge Gorcyca again asked Ms. Stieb (who was in the courtroom that morning on other matters) for her guidance and together they entered the jury room to determine the nature of the problem on this occasion.

Immediately upon entering the jury room, Judge Gorcyca observed RT (the second child) sitting in a chair, his legs placed over a second chair with his head tucked between his legs. RT was theatrically breathing heavily, sobbing and panting with a roll of toilet paper next to his shoe. Present in the room were his father, the parenting time coordinator Art Gallagher, and the Guardian ad Litem, all of whom observed this behavior.

Judge Gorcyca attempted to take control of the situation and politely, but sternly, asked RT to sit up and cease his foolish behavior. Judge Gorcyca then asked RT what was wrong. RT responded that he did not want to have parenting time with his father. When Judge Gorcyca asked why, RT said it was because his father had assaulted him. Judge Gorcyca then told RT that the court had previously conducted a hearing regarding that issue (on March 23, 2015) and found that there wasn't evidence to support that allegation. (**Appendix 8**, Exhibit R54).

Judge Gorcyca then asked RT whether there was any other reason he did not want to visit with his father. RT, through theatrical sobs, said, "He didn't say happy

birthday to me.” The father immediately responded in a very calm manner, “Honey, I did say happy birthday to you.”

Judge Gorcyca testified that she said, “[RT], this is a good thing. This shows me that you want more attention from your Dad and your Dad really wants to be in your life.” Judge Gorcyca asked RT to remind her when his birthday was, and RT stated that it had been in August (almost a year prior and close in time to when the children had previously violated the parenting-time order in the court). Ms. Stieb spoke to RT about starting fresh with his father. RT said something to the effect that he did not want to do so because it wasn’t the first time his dad had been mean. RT then refused to interact or converse further with his father or Judge Gorcyca.

Again, Judge Gorcyca told RT that there were serious consequences for his continued refusal to follow the court’s orders. Judge Gorcyca reminded RT that it was not up to him or his siblings to decide whether they were to participate in parenting time with their father. The court also reminded RT of the prior conversations regarding the consequences of his refusal to comply, including potentially going to Children’s Village. RT was reminded of the conversation in the court hallway that occurred the previous August.

After Judge Gorcyca exited the jury room she handwrote a script that she wanted the mother to read to the children in the jury room. Judge Gorcyca’s rationale for doing so was based upon something RT had said in the jury room indicating that he always listened to his mother. The written statement included statements like, “kids, your dad loves you”, “he will not harm you”, “your dad wants to be in your life”, “I want him to be

in your life”, “he will not harm me”, and, “I want you to spend time with your dad and to have a good relationship with your father.”

Judge Gorcyca consulted with Mr. Bossory (mother's then-attorney) and Ms. Middleditch (father's attorney) concerning this idea. Judge Gorcyca informed the attorneys and the Guardian ad Litem what had just transpired in her jury room with RT. Judge Gorcyca told the attorneys that she was desirous of having the mother read the statement to the children in the presence of the father while in the jury room. Both attorneys and the Guardian ad Litem agreed. Judge Gorcyca was then informed that NT (the youngest child) had entered the jury room and also refused to interact with, or for that matter look at, her father.

After Mr. Bossory consulted with the mother privately, she agreed to read Judge Gorcyca's statement to all three children and to facilitate parenting time. Ms. Eibschitz-Tsimhoni read the statement to the children and then added a couple of statements in Hebrew. Judge Gorcyca then left the jury room so that the family could talk to each other with the help of the Family Counselor, the Guardian ad Litem, and Mr. Bossory.

Shortly afterward, Judge Gorcyca was informed that despite all of these efforts, all three children continued to refuse to communicate with their father and refused to participate in any parenting time. Judge Gorcyca then informed the parties and their attorneys, as well as the Guardian ad Litem, that she was appointing attorneys for each of the three children. She informed the parties that the court would be proceeding with a civil contempt hearing regarding the children, if necessary, after the children had time to consult with their newly-appointed attorneys.

All three court-appointed attorneys met privately with the children. After the meetings, the children refused to relent and participate in parenting time with their father. The court was then forced, as a last resort, to conduct the civil contempt hearing and further proceedings that are at issue in this investigation. (**Appendix 11**, Exhibit R85).

The court first addressed LT. Judge Gorcyca indicated on the record that she had ordered LT to participate in parenting time and he specifically refused on the record saying “I will not talk to [my father].” This represented a clear and unequivocal contempt in the view and presence of the court. Judge Gorcyca was within her discretion to treat this direct contemptuous behavior in a summary fashion.

The court then addressed RT and NT. Both of these children were subject to written orders to participate in parenting time that day. Like their brother before them, each directly refused to comply with the orders of the court. RT indicated that “he would rather go to Children’s Village” than have parenting time with his father; NT said “I refuse because I want to refuse.” These similarly were direct contempts before the court and were appropriately dealt with in a summary fashion.

Given the complex history of this case, it is inevitable, and very conceivable, that outsiders, acting upon a scant few facts late in the proceedings might misinterpret the rulings and decisions, and take certain quotes and decisions out of context. Judge Gorcyca firmly believes that her rulings on the record during the hearings referenced by the Commission were well-reasoned and justified under the circumstances.

While Judge Gorcyca said what she said and did what she did, she did so in the face of a very frustrating and exasperating situation. Given the opportunity of hindsight,

perhaps more subtle verbiage would have been used. The decision to hold them in contempt was not made lightly but emanated from the children's efforts to disobey the court's orders. It is important to note that the children were represented by accomplished and highly experienced attorneys, each of whom indicated he or she had more than enough time to prepare. No attorney or party objected on June 24, 2015.

Following the hearing, the Judicial Tenure Commission commenced an investigation of Judge Gorcyca's actions and statements on the record. The Commission sent a 28-day letter to Judge Gorcyca comprised of 73 separate allegations of wrongdoing. Judge Gorcyca responded to the 28-day letter in the appropriate course. The Commission took issue with only two of the Judge's responses to the allegations, but misconstrued those responses in its Formal Complaint.

Particularly, the Commission's Formal Complaint accused Judge Gorcyca of making a false statement when she "stated that when she was making circular motions at her right temple when referring to LT she was not indicating that he was crazy but was referring to the forward movement he would make in therapy." This allegation completely misconstrued Judge Gorcyca's response to the allegation in the 28-day letter. (**Appendix 13**, Exhibit E69). Judge Gorcyca's response to the question posed was:

32. On June 24, 2015, you directed the father to notify you when Liam was "no longer like Charlie Manson." While making that statement, you used your finger in a circular motion at your temple, indicating that Liam was crazy.

The Hon. Lisa Gorcyca denies the truth of the statement. Judge Gorcyca stated:

Dad, if you ever think that he has changed and therapy has helped him and he's no longer like Charlie Manson's cult, then you let us know and we can do it.

(Exhibit [R85], Transcript of, and Exhibit [R86], Video record of June 24, 2015 hearing). At no time did Judge Gorcyca compare Liam directly to Charles Manson.

The Guardian Ad Litem had initially referenced the "Manson-like behavior" regarding his observation of these three minor children in his November 3, 2014 GAL report. (Exhibit [R43], Report and Recommendation of Guardian Ad Litem filed November 3, 2014 at p. 19). He noted:

I use this Manson-like phenomenon to describe the kids as the girls that were associated with Manson indicated how he would be "telegraphing" his "vibes" to them. In fact, Ms. Stieb indicated to this writer that she saw the children tapping their feet under the table in the jury room as if they were sending Morse codes to each other.

(Exhibit [R43], Report and Recommendation, at p. 19 – footnote 17). Judge Gorcyca adopted this shorthand reference to the GAL report, understandable by the parties, the attorneys, the GAL, the Family Counselor and the Court, to describe the bizarre behavior she saw in the children.

The Hon. Lisa Gorcyca denies the truth of the statement that her gesture made while she was speaking **was intended to indicate or even imply** that Liam was crazy. She **believes** that her hand motion **was intended to** indicate that Defendant father should let the court know if Liam had made any forward movement as a result of the therapy he would soon be receiving, simulating the motion of a wheel moving forward. The video depicts many hand movements throughout the course of the hearing. Judge Gorcyca frequently speaks with her hands.

Judge Gorcyca recognizes how this hand gesture is portrayed on the video, realizes the symbolism behind the gesture, and how it could be misunderstood. If anyone believes or believed that she was indicating that Liam was crazy at the time, **Judge Gorcyca will accept responsibility for the misunderstanding. However, she never intended to offend anyone in this way.**

(Appendix 13, Exhibit E69, at pp. 30-31, paragraph 32 and response) (emphasis added). Judge Gorcyca testified that she had no memory, beyond seeing it on video, of making the gesture and further had no memory of what she was thinking at the time. It

was for this reason that she answered carefully when asked what she meant. She testified that she *believed* that she meant something other than what was alleged. Judge Gorcyca was the only witness who testified regarding this issue. The Commission recognized that Judge Gorcyca's statements in this regard were not misrepresentations, rejecting the Master's conclusions in this regard, but for some reason nevertheless recommended an assessment of costs.

From the very inception of these proceedings, Judge Gorcyca has enjoyed overwhelming support from the Family Law bar and bench. She has become aware of, before, during and after the trial, substantial letters and press releases that support her actions and support her as a very good and well-respected judge in Oakland County. **(Appendix 30, 31).**

ARGUMENT

1. Standard of Review

The burden of proving the allegations of a judicial misconduct matter is on the Examiner and the allegations must be proven by a preponderance of evidence. *In re Ferrara*, 458 Mich 350 (1998); MCR 9.211(A). The Supreme Court reviews recommendations made by the Judicial Tenure Commission and its findings of facts *de novo*. *In re Chrzanowski*, 465 Mich 468 (2001).

2. The Commission inappropriately “decided” alleged legal errors in Judge Gorcyca’s conduct of the contempt hearings beyond its jurisdiction.

MCR 9.203(B) sets forth specific limitations on the power of the Judicial Tenure Commission in reviewing court orders:

The commission **may not function as an appellate court to review the decision of a court or to exercise superintending control or administrative control of a court**, but may examine decisions incident to a complaint of judicial misconduct, disability, or other circumstance that the commission may undertake to investigate under Const 1963, art 6, sec 30, and MCR 9.207. **An erroneous decision by a judge made in good faith and with due diligence is not judicial misconduct.**

(Emphasis added). It is such a strong tenet, oft-repeated, that the Commission has included the following in the Frequently Asked Questions section on its website:

DOES THE COMMISSION HAVE JURISDICTION OVER LEGAL DECISIONS, OR CAN IT BECOME INVOLVED IN OR COMMENT ON A LEGAL ACTION?

No. The Commission does not function as an appellate court, and it does not review judicial decisions or errors of law. The Commission **cannot** intervene in a court case, change a decision or order in a case, remove or change the judge assigned to a case, explain court procedures, provide an opinion about specific judicial actions or conduct (except in a decision and recommendation issued in the course of a formal disciplinary proceeding), or give legal advice. The Commission will **attempt** to refer individuals to other agencies where appropriate.

(**Appendix 25**, Emphasis in original). On May 27, 2016, the Master repeated this same standard several times throughout the motion hearings. (**Appendix 16**, Motion transcript, at pp. 20 (“[A]n erroneous decision by a judge made in good faith and with due diligence is not **and will not be considered by this Master to be judicial misconduct**) (emphasis added); The Master made the same statement at p. 49 (“And, Tom, I reiterate, 902 – 9.203(B) specifically indicates that an erroneous decision by a judge made in good faith and with due diligence is not judicial misconduct.”); The Master again set the rule forth in his report at p. 21 (“An erroneous decision by a judge made in good faith and with due diligence is not judicial misconduct”) (**Appendix 20**, Pleading Index 30). Unfortunately, the Master then ignored this tenet in making his conclusions of law in this matter.

In its recommendation to this Court, the Commission also ignored this limitation on its authority and jurisdiction. In this regard, the Commission stated:

As a result, the Commission finds that Respondent’s actions resulted in the following acts of judicial misconduct occurring on June 24, 2015:

- Respondent held LT in contempt on June 24, 2015 for refusing to engage in parenting time with his father on that date, **when the only order applying to him** called for him to visit with his father on July 14, 2015.
- Having ordered three children confined to Children’s Village for contempt of court, Respondent **delegated to a third party the discretion** to determine when they had purged themselves of contempt.
- Respondent failed to act in a patient, dignified, and judicial manner during contempt proceedings against three children, ages nine, ten, and thirteen, engaging in insulting, demeaning, and humiliating comments and gestures directed toward them far exceeding the proper bounds of stern language permitted to a judge.

(**Appendix 24**, Recommendations, at p. 18) (emphasis added). The Commission, like the Master before it, made no findings or decision as to whether there was a showing by the Examiner of a lack of good faith or due diligence.

Lack of good faith has been found where a judge has “act[ed] in **disregard of the law** and the established limits of the judicial role to pursue a perceived notion of the higher good.” *In re Morrow*, 496 Mich 291 (2014) (emphasis added). The Supreme Court has also held that “**an intentional refusal to follow the law or a court rule** can be judicial misconduct.” *Pelligrino v AMPCO System Parking*, 486 Mich 330 fn. 15 (2010), citing *In re Hague*, 412 Mich 532, 547-554 (1982) (emphasis added).

The decision of the Commission as to the issue of contempt reflects that it determined only issues of law, and criticizes Judge Gorcyca’s alleged procedural defects in finding the children in contempt. The Commission characterizes, perhaps hyperbolically, Judge Gorcyca’s conduct as “targeting” the children for the failures of the parents, and criticizes her for “attempt[ing] to control the tides,” but ultimately finds only that (1) the order as to LT may not have been sufficient to hold him in contempt, and (2) that she gave the keys to the children’s freedom to their father. These are appellate issues and the precise type of issues that this Commission has no jurisdiction over. MCR 9.203(B); *In re Hathaway*, 464 Mich 672, fn. 2 (2001). Judge Gorcyca did not act in the absence of any order whatsoever, and further was faced with children who specifically told her on the record that they would follow no order to participate in parenting time. If she was wholly without discretion to act under those circumstances,

Judge Gorcyca would have expected the children's attorneys, the mother's attorney, or the children's Guardian ad Litem to object. No one did.

The Commission, beyond its strong criticism of her conduct, provided no analysis whatsoever as to whether Judge Gorcyca acted "in good faith and with due diligence," and no evidence was presented by the Examiner as to her motives. The Examiner never challenged anything but the ruling, clouding the issue at best with arguments about a crying and shaking NT and the application of handcuffs (which the Master found to be appropriate given the OCSO policies). The Master did not find that Judge Gorcyca did anything but make an errant ruling (a conclusion with which, as shown below, Judge Gorcyca disagrees). No evidence was elicited that accused Judge Gorcyca of acting "in disregard of the law" or showed an "intentional refusal to follow the law."

The Commission, like the Master before, further ignored the only testimony concerning Judge Gorcyca's motivation presented at the hearing. Judge Gorcyca was trying to help this family. She recognized that "if something drastic wasn't done, there was going to be no hope for this family." (**Appendix 23**, Hearing transcript, at p. 321). She was acting as a family court judge in the best interest of repairing a family that had been torn apart previously. Doing so is her calling, and demonstrates factual good faith.

The law of contempt is very difficult to understand from a substantive law standpoint. (**Appendix 20**, Master's report, at p. 10), and full of "knotty procedural questions." (**Appendix 24**, Recommendation, at p. 16, fn. 20).³ Certainly judges have

³ It was for this reason that Respondent sought to present a recognized expert in contempt: Honorable Michael Warren of the Oakland County Circuit Court. Judge Warren would have been able to inform the Master of the recent law concerning contempt and would further have commented on whether the "keys to the jailhouse door" were appropriately provided to the

been wrong before in applying its standards and the Court of Appeals reports are rife with examples of appeals on these issues. Just a few examples of Court of Appeals decisions in the past twenty years include: *In the Matter of McGinnis*, Unpublished opinion of the Michigan Court of Appeals, Docket No 196382 (February 17, 1998); *People v Fisher*, Unpublished opinion of the Michigan Court of Appeals, Docket No 203465 (January 29, 1999); *In re Contempt of ACIA*, 243 Mich App 697 (2000); *In re Contempt of Kowal*, Unpublished opinion of the Michigan Court of Appeals, Docket No 223306 (October 26, 2001); *Bencheck v Estate of Paille*, Unpublished opinion of the Michigan Court of Appeals, Docket No 298334 (October 6, 2011); *Jackson v Jackson*, Unpublished opinion of the Michigan Court of Appeals, Docket No 301953 (April 10, 2012); *Roller v Roller*, Unpublished opinion of the Michigan Court of Appeals, Docket No 324130 (January 14, 2016); *Grier, Copeland & Williams, PC v Shirley T. Sherrod, MD, PC, et al.*, Unpublished opinion of the Michigan Court of Appeals, Docket No 325656 (June 21, 2016); *Carr v Carr*, Unpublished opinion of the Michigan Court of Appeals, Docket No 326782 (July 19, 2016). (**Appendix 28**).

These were all cases where the trial judge misapplied the law or procedure of contempt, in both criminal and civil contempt contexts, and were reversed by the Court of Appeals. A review of the decisions and pending complaints in the JTC indicate that none of the judges of the trial courts in these cases were charged or sanctioned by this

children. The Master precluded Judge Warren from providing the expert testimony proffered, concluding that he himself was sufficiently expert to discuss and decide the issues.

Further, had the Master appropriately applied MCR 9.211(C) and allowed the preservation of this testimony in a separate record, the Commission would have further had the benefit of Judge Warren's expertise on these issues. (**Appendix 16**).

body for their errors of law or procedure. The Court of Appeals exists to correct the errors of trial judges. The Judicial Tenure Commission cannot do so.⁴

Short of an intentional disregard for or refusal to follow the law, Judge Gorcyca's decision to proceed with a contempt hearing with an allegedly insufficient written order in place is solely an appealable issue. *In re Contempt of Dougherty*, 429 Mich 81 (1987). Proceeding with a civil contempt hearing without providing the keys to the jailhouse door to the contemnor similarly is an appealable issue. *In re Moroun*, 295 Mich App 312 (2012). The Commission improperly usurped the province of the Court of Appeals and then decided these issues in the context of a misconduct proceeding. This is not affected by the fact that no objection was made during the June 24, 2015 hearings and no appeal was advanced.⁵

⁴ Respondent also sought to present the testimony of Justice Maura Corrigan, retired, who would have provided the opinion that any errors in Judge Gorcyca's conduct of the contempt hearing were legal and/or procedural in nature, and that Judge Gorcyca did not act in bad faith or intentional derogation of the law. The Master also precluded Justice Corrigan for the same reason: That he could apply the standards correctly. He similarly refused to allow a separate record of her proposed testimony as well. (**Appendix 16, 17**).

⁵ In fact, not only did no attorney in the courtroom object, but two of the children's attorneys testified that they had no basis to object to Judge Gorcyca's decision that day. In this regard, Karen Gullberg Cook, representing NT, testified:

- Q. Did you object to the court's finding that NT was in contempt?
- A. No.
- Q. You did not object on the record?
- A. No.
- Q. Why did you not object on the record?
- A. Because I didn't think it would do any good at that point, and I was – I – she directly defied a court order, and I didn't believe that that was in her best interest. My plan was to go over to the Village subsequently, build up a rapport with her, and have her – because she then would have some confidence, I was hoping, with me, to say, yes, I will now have a relationship with my father. At that point it wasn't going to do any good, in my opinion.
- Q. Did you think that there was a basis to object as you saw the hearing proceed?
- A. No.

Any decision by the Commission that Judge Gorcyca committed errors of law or procedure cannot support a finding of judicial misconduct.

3. Judge Gorcyca did not abuse her contempt power when she provided the keys to the children's freedom to the father, as well as to the children, because he was the joint legal custodian of the minor children.

Even were it not solely a legal issue beyond the jurisdiction of the Commission, the Commission erred factually when it decided that Judge Gorcyca abused her power because the "discretion to determine when [the children] had purged themselves of contempt" was given to the father in addition to the children. By making this finding, the Commission presumably relies on the same select snippets of record statements,

(Appendix 18, Hearing transcript, at pp. 85-86).

Michael Dean, representing RT, also testified:

- Q. Did you object to the court when your client was held in contempt?
- A. No I did not.
- Q. Are you aware or did you have a basis to object, do you think?
- A. I believe I did not.

(Appendix 18, Hearing transcript, at p. 122).

In addition, the Guardian ad Litem, representing the best interests of the children, testified:

- Q. Now, you, representing the best interests of the children, did not object?
- A. No.
- Q. Why did you not object?
- A. Because this courtroom and this proceeding, the judge is in charge of this case, not the guardian ad litem, not the parents' attorneys, not the children. She took control of the case and she did what judges do when they swear to uphold the law, okay, and they take an oath And sometimes they have to make decisions, okay, which are – they have to uphold the law and do what they feel is best. And sometimes it has consequences, but good judges do not at all shrink –
- *****
- Q. Representing the best interests of the children, did you have a problem with how judge Gorcyca handled these proceedings?
- A. **Absolutely not.**

(Appendix 18, Hearing transcript, at pp. 226, 227) (emphasis added).

ignoring context, upon which the Master relied. Such a limited review presumes more than the evidence showed. During the June 24, 2015 hearing, the court and Mother's attorney had the following exchange, referred to by the Master in his report:

THE COURT: . . . We'll set the review hearing I guess what, September 1st? Unless you, for whatever reason, talk to your dad and your dad comes to me and says, "Oh my gosh" – oh, and he needs to have counseling in Children's Village. And your Dad says, "Judge Gorcyca, I – my son has seen the light and he's changed and can – can you let him out? And he's – wants to have a relationship with me." And then I'll do it, so.

MR. BOSSORY: Judge, before you –

THE COURT: So dad, just let us know when that happens.

MR. BOSSORY: Judge –

THE COURT: And if that doesn't happen – actually, you know what, we're just going to set a review hearing when you're 18. Dad, if you ever think that he has changed and therapy has helped him and he's no longer like Charlie Manson's cult, then you let us know and we can do it.

(**Appendix 11**, Exhibit R85, at pp. 9-10).

Judge Gorcyca clearly did not deprive LT of the opportunity to purge his contempt. In fact, the above is clearly based upon LT's actions. LT can purge by talking to his dad. LT can purge by seeing the light. LT can purge by wanting to have a relationship with his father. LT can purge by changing his actions. LT only had to follow the simple court order to participate in parenting time with his father. His father was given the power and the responsibility to contact the court once LT had ceased his contumacious behavior. Such responsibility should not shock the conscience of this Court, especially given that the father is the joint legal custodian of the children and responsible for them to the court. (**Appendix 1**, Exhibit R19, at p. 2).

Even if the above exchange was read to provide the keys to LT's freedom to the father, there is nothing in the exchange that *removes* the power to purge from LT. LT always had the power to contact the court himself (either directly or through his court-appointed counsel), or, in his meetings with the GAL while at Children's Village. LT could have informed Mr. Lansat or the staff at Children's Village that he wished to address the court at any time. In fact, Mr. Lansat specifically understood that LT had the keys to his freedom, having met with him on two occasions and having asked if he'd changed his mind about communicating with his father. (**Appendix 18**, Hearing transcript, at p. 235; **Appendix 12**, Exhibit R87, July 10, 2015 hearing, at pp. 16-17). His attorney, Jeffrey Schwartz, also reported that in his conversations with LT, LT's position did not change. (**Appendix 12**, Exhibit R87, at p. 15-16).

With respect to RT and NT, Judge Gorcyca had a similar exchange:

THE COURT: I don't know what it is. I've never seen anything like it. You're a defiant, contemptuous young man and the court finds both of you in direct contempt. You both are going to live in Children's Village. Your mother is not allowed to visit. Only your father and therapist and Mr. Lansat. When you are ready to have lunch with your dad, to have dinner with your dad, to be normal human beings, I will review this when your dad tells me you are ready. Otherwise, you are living in Children's Village til you graduate from high school. That's the order of the court. Good bye.

.....
THE COURT: Yes. Yes, I'll keep the attorney – I'll – actually, I'm going to keep the attorneys for the review date, which will be September 8th at 9:00, unless, dad, you come earlier. Because you – you're going to – you're going to be on the approved list with Mr. Lansat. When the children say they're ready to have a relationship with you I will – when you're ready to come in I'll do it that day. We can do it ex parte. Not ex parte, but –

(**Appendix 11**, Exhibit R85, at pp. 22-23). Just as with LT before, Judge Gorcyca put the keys to their freedom in their own hands. RT and/or NT could purge by having lunch

with their dad. RT and/or NT could purge by having dinner with their dad. RT and/or NT could purge by changing their behavior. They only needed to follow the court's orders.

There is nothing in Judge Gorcyca's statements that says or even implies that the children did not have the power to purge their contempt on their own, and their own attorneys recognized that the children had that power in their hands. For instance, Michael Dean, representing both NT and RT at the July 10, 2015 hearing, specifically stated that both children wanted "to return home to mother and that they still would not want to talk with their father at this time." (**Appendix 12**, Exhibit R87, at p. 15).

Everyone present understood that the children were the decision-makers with respect to whether they purged their contempt. They held the keys to their freedom and the Commission's decision on this issue is not supportable.

4. The evidence presented by the Examiner in this matter did not establish that Judge Gorcyca abused her contempt power by targeting the children, LT, RT and NT, and instead demonstrates that Judge Gorcyca used the contempt power as a last resort after several other attempts to have the children participate in parenting time were thwarted by the children.

Although the Commission pays lip service to the facts of the underlying matter,⁶ the Decision filed in this Court does not reflect that the five-year history of this case was appropriately weighed in considering her conduct.

In addition to exceeding its jurisdiction by considering the legal issues surrounding her decisions below, the Commission further appears to conclude that Judge Gorcyca abused her contempt power by using it at all, characterizing her use of the power as "targeting" the children. This finding is not supported by any evidence presented by the Examiner, and not supported by a review of the record in this matter.

⁶ The Commission in truth all but ignores the history of the case by summing it up in one brief paragraph on page 4 of its recommendations. The record is replete with references to the attempts of the Court to simply have the children participate in parenting time.

In this regard, the Commission stated that Judge Gorcyca used the “awesome” power of contempt to “vent her frustration” and “was targeting children” for actions “not of their own making.” All of these conclusions are wrong.

While Judge Gorcyca recognizes that “contempt is among the most powerful tools available to a judge,” *In re Hague*, 412 Mich 532, 555 (1982), and that this Court has recognized it as an “awesome [power that] must be used with the utmost restraint,” *In re Contempt of Auto Club*, 243 Mich App 697, 708 (2000), the record reflects that Judge Gorcyca did use that power with utmost restraint and only as a last resort after all other efforts had failed. Judge Gorcyca was not attempting to command the tide or force a loving relationship, but rather acted in her discretion and in her belief that the best chance of reuniting this father with the children was to have them comply with valid orders and *participate* in parenting time sessions. They refused, at every turn, to enter the same room, and even when compelled to do so, to interact with their father during these sessions.

Judge Gorcyca tried many different interventions to change the children’s behavior. Beginning in August 2014, she ordered the very unusual step of conducting parenting time in her jury room; such had never been ordered in any of her thousands of previous cases. So unusual was this order that neither the Friend of the Court Supervisor nor the Guardian ad Litem had ever remembered a case in which such action was taken. As shown in the Statement of Material Facts above, the children were obstinate and defiant to not only the adults supervising the parenting time session, but to Oakland County Sheriff’s Office deputies and Judge Gorcyca herself, all of whom attempted to facilitate parenting time on that date. It is important to again note that the

children were informed about the consequences of refusing to follow the Court's orders, and were specifically told they could be sent to Children's Village if they continued to refuse.

The Assistant Prosecutor, Lisa Harris, in a record made that day, found the circumstances to be "beyond absurd" (**Appendix 4**, Exhibit R77, at p. 9), and indicated that she was ready to have attorneys appointed for the children and proceed with a contempt hearing that afternoon.⁷ After the Guardian ad Litem objected and suggested a different remedy on behalf of the children, Judge Gorcyca rejected Ms. Harris' suggestion at that time, recognizing that this was her first interaction with the children and that contempt proceedings were not then warranted. However, Judge Gorcyca did direct the mother to compel the children's participation.

⁷ The Commission points to this suggestion, and Judge Gorcyca's rejection of the suggestion at that time, to indicate that Judge Gorcyca "[understood] that it was the prosecutor who would be bringing contempt charges" and that therefore Judge Gorcyca "was aware that contempt proceedings in August would have been criminal in nature." (**Appendix 24**, Recommendations, at p. 5, fn. 4). From these same facts, the Master and the Commission, in their respective recommendations, criticize Judge Gorcyca's *civil contempt* proceedings on June 24, 2015 because of her prior "understanding."

No evidence of this "understanding" was presented, and no conclusion regarding Judge Gorcyca's understanding can be drawn from the fact that the Assistant Prosecutor suggested contempt proceedings at that time, or from Judge Gorcyca's restraint at that time. There was also no evidence that the proceedings in August 2014 would have been *criminal* contempt proceedings, **because the nature of the proceedings is defined by the intent of the court. If the intent of the court was to punish, the proceedings are criminal; if the intent was to coerce compliance, the proceedings are civil in nature.** It is irrelevant whether the proceedings are initiated by a prosecutor or the court.

Further, the characterization of whether such proceedings in August 2014 were civil or criminal in nature is not dispositive or material to the question of whether the proceeding in June 2015 would be civil or criminal in nature.

In any event, these are legal issues beyond the purview of these proceedings.

Over the next nine months, Judge Gorcyca tried many orders short of contempt that were intended to encourage the children participate in parenting time.⁸ In a November 12, 2014 order that followed the Guardian ad Litem's suggestion that the court take "draconian measures," Judge Gorcyca ordered that the transfer of the children for parenting time take place *at the court and with a deputy present*. Despite this order, parenting time did not improve.

On March 4, 2015, the Court set a schedule for regular parenting time for the father and noted that parenting time had not improved. The court, trying to impress *yet again* that the children were required to follow its orders, ordered that until they complied they were to lose access to electronics, visits with friends and television until they began to communicate with the father. In addition, because the children refused to eat when with their father, ordered that they were no longer to be given a replacement meal by their mother. The Court essentially grounded the children. Parenting time did not improve.

On April 2, 2015, the parties stipulated to an order that the mother, because of *her* actions in the failed parenting time, would spend a full day in the Oakland County lockup for contempt. The same order required that the children spend the better part of their spring break from school *in the courtroom* so that the father could exercise parenting time. Judge Gorcyca essentially gave the children a time-out in her courtroom. Parenting time did not improve. Most importantly at this time, Judge Gorcyca **ordered the children and their mother to tour Children's Village**.

All of these prior attempts to impress upon the children that they were expected to follow the Court's orders and they were required to not only participate in parenting

⁸ Again, the Commission, in its recommendations, ignores these efforts proven by the record.

time but also tour Children's Village were thwarted, ignored and intentionally disregarded. They were all attempts to avoid using the most powerful tool in the toolbox: contempt. This series of attempts and orders also show that Judge Gorcyca did not, as the media and the Commission imply by omitting these facts, simply jump forward to the issue of contempt.

On June 24, 2015, things were no better. The children again ignored all directives and orders. They again refused to participate in parenting time in any reasonable fashion. They refused to listen to the parenting time supervisor. They refused to listen to the Friend of the Court Family Counselor. They refused to listen to Judge Gorcyca. They refused to obey their mother's statement in the jury room.

It was only after this history of defiance and thwarting of court orders that Judge Gorcyca felt she had no choice but to appoint attorneys and proceed, if necessary, with contempt hearings. Even then, she testified, she never believed that she would be proceeding with a hearing and hoped that the children would listen to their appointed attorneys. (**Appendix 19**, Hearing Transcript, at p.334) LT would not listen to his attorney, and though RT and NT appeared to initially agree to parenting time, RT changed his mind and NT followed after Judge Gorcyca indicated that LT had been referred to Children's Village. When each child in turn told Judge Gorcyca on the record that he or she would not meet with their father and would not follow her orders moving forward, she faced a Cornelian dilemma: Either enforce her orders using the last tool in her toolbox or simply allow the children to be defiant and throw up her hands concerning this family.

Judge Gorcyca was in an “ultimate” position and facing her “last resort.” She had exercised the “utmost restraint” over her course of dealing with these children and their mother. She had no choices left. She was well within her discretion to conduct contempt hearings and hold the children in contempt.

Rather than “target” the children, Judge Gorcyca addressed the contumacious conduct of “persons” before the Court. MCL 600.1701(g). To the extent that the recommendations of the Commission criticize Judge Gorcyca’s exercise of her contempt authority with regard to children, there is no law or authority in Michigan that children cannot be held in contempt of court,⁹ nor would such a ruling be sound public policy. No statute or case in Michigan excludes children from the terms of the statute or excuses children from their obligation to respect and follow “any lawful order, decree, or process of the court.” All three of the children disobeyed the Court’s lawful orders.

To hold that juveniles could not be held responsible to a court for contempt would strip the family courts and juvenile courts of all power to control delinquent and defiant children. Judge Gorcyca had no choice and did not commit misconduct by exercising her contempt power under the circumstances.

⁹ This was recognized by the Commission on one hand, but then discussed as if such a conclusion should have been obvious to a Circuit Court judge. (**Appendix 24**, Recommendations, at p. 16, fn. 20, para. 2). The Commission cites extra-jurisdictional authority from other states that have decided the legal issues of whether children may be held in contempt. None of this authority was brought to Judge Gorcyca’s attention when ruling, or at any time thereafter. Suffice to say, there are as many, if not more, jurisdictions that allow children to be held in contempt. See generally, Hughey, *Holding a Child in Contempt*, 46 Duke L.J. 353 (1996). (**Appendix 27**).

5. Judge Gorcyca's language and demeanor on the record on June 24, 2015 was stern and perhaps harsh, but this one incident of frustration does not rise to the level of misconduct.

Judge Gorcyca agrees that her words and language used on the bench at the contempt hearing were stern. Her language is necessarily subject to review along a spectrum. Judge Gorcyca has consistently taken responsibility for the words she used on that date, particularly when addressing the children.

Judge Gorcyca acknowledges that she was stern with the children. She also acknowledges that she was frustrated and exasperated by what she perceived to be nonsensical decisions being made by the children to go to Children's Village over complying with normal and regular parenting-time orders.¹⁰ Even in the face of this frustration and exasperation, Judge Gorcyca was not angry at the parties or the children on that date.

It's important to note that this was one circumstance and one record. There was no allegation and there were no proofs presented that Judge Gorcyca had anything more than one such hearing. She is not persistently rude to parties or others in her court. At worst, she had a single lapse of civility in the face of a particularly difficult situation. In fact, the evidence presented at the hearing was that Judge Gorcyca is an even-tempered and "phenomenal" judge on the bench. In this regard, Mr. Lansat testified at the May 31, 2016 public hearing:

Q. How many times have you been before Judge Gorcyca, do you think?

A. Well, you know, it would be hard to quantify that. I do, you know, take assignments from all of the judges and –

¹⁰ As this Court is no doubt aware, "[i]t is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents." MCL 722.27(a)(1).

Q. More than you can count?

A. Probably over the last five years.

Q. **How is her demeanor on the bench generally?**

A. **Phenomenal.**

(Appendix 18, Hearing transcript at p. 237) (emphasis added). Further, the Commission subpoenaed and reviewed *all of Judge Gorcyca's* hearings in which she referred children to Children's Village from January 2010 to the date of the subpoena, and had no criticisms whatsoever of Judge Gorcyca's demeanor in any of them.

The Standards of Judicial Conduct set forth in Const 1963 art 6 sec 30(2) speak to what constitutes misconduct with respect to issues of intemperance:

(2) On recommendation of the judicial tenure commission, the supreme court may censure, suspend with or without salary, retire or remove a judge for conviction of a felony, physical or mental disability which prevents the performance of judicial duties, misconduct in office, **persistent failure to perform his/her duties, habitual intemperance or conduct that is clearly prejudicial to the administration of justice.** The supreme court shall make rules implementing this section and providing for confidentiality and privilege of proceedings.

Id. (emphasis added). The provision understandably speaks to *persistent* failures and *habitual* intemperance. MCR 9.205(B), in pertinent part, speaks to the same:

(B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, **persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice.**

Id. (emphasis added). In defining misconduct in office, MCR 9.205(B)(1) expresses similar concerns about persistent and/or habitual conduct on the bench:

(1) Misconduct in office includes, but is not limited to:

- (a) **persistent** incompetence in the performance of judicial duties;
- (b) **persistent** neglect in the timely performance of judicial duties;
- (c) **persistent failure to treat persons fairly and courteously**;
- (d) treatment of a person unfairly or discourteously because of the person's race, gender, or other protected personal characteristic;
- (e) misuse of judicial office for personal advantage or gain, or for the advantage or gain of another; and
- (f) failure to cooperate with a reasonable request made by the commission in its investigation of a judge.

Id. (emphasis added). There was no evidence of persistent or habitual intemperance on Judge Gorcyca's part. In fact, the Master recognized that this case represented a very isolated instance:

THE MASTER: . . . [T]o Judge Gorcyca's benefit, I think it can almost be stipulated that they found no misconduct in the four and a half or five years of proceedings.

(**Appendix 16**, Motion transcript, at p. 46).

THE MASTER: And I am very cognizant of that. I am very cognizant of how tricky this particular area is, how difficult it is. I also understand the very trying circumstances that Judge Gorcyca was under and stressful circumstances that Judge Gorcyca was under in this particular case. That's a given.

(**Appendix 16**, Motion transcript, at pp. 49-50).

THE MASTER: Judge Gorcyca did a fine job and there are no allegations of any complaints of misconduct prior to the 24th.

(**Appendix 16**, Motion transcript, at pp. 52-53). It is important to remember that this is only a twenty-one minute snapshot out of a distinguished eight-year career as a respected Circuit Court judge.

While one instance of intemperate behavior can constitute misconduct in office, such a finding should be reserved for situations much more severe than the facts in this matter. Judge Gorcyca, despite using stern, or even “beyond stern” language, did not swear at the children from the bench. She did not stand to yell, nor did she throw items from the bench or around the bench. She did not slam her fists or threaten the children.

Judges can get frustrated and exasperated. Judge Gorcyca is a human being. Not “every angry retort or act of discourtesy” amounts to judicial misconduct, and the facts of each instance must be evaluated separately. A judge is *only* subject to discipline when the comment amounts to “conduct that is clearly prejudicial to the administration of justice.” *In re Hocking*, 451 Mich 1, 16 (1996) (emphasis added).

The Supreme Court expounded on what would constitute conduct clearly prejudicial to the administration of justice. The Court recognized that:

A judge's mode of articulating a basis for decision may exhibit such a degree of antagonism or other offensive conduct that a single incident would indicate that impartial judgment is not reasonably possible. In that event, the judge has prejudiced the administration of justice because the conduct undermines public confidence in the impartiality of justice.

Hocking, at 13. The Court further stated:

Comment based on knowledge acquired during a proceeding is misconduct when it is so clearly unacceptable that it displays an unfavorable predisposition indicating an inability to impartially determine the facts. See *Liteky v United States*, 510 US 540, 551; 114 S Ct 1147; 127 L Ed 2d 474 (1994)[.]

Id., at 13-14.

Judge Gorcyca’s stern language in this case did not exhibit such degree of antagonism, and while perhaps harsh, did not impair her judgment. Judge Gorcyca conducted an appropriate and sound contempt hearing, allowed counsel for the children

and the parties to make a complete record and argument, and, after ruling, appropriately remanded the children to the least-restrictive environment at Children's Village in Mandy's Place. There is no evidence, or even any indication, that Judge Gorcyca prejudiced the administration of justice or the contempt process.

None can say, under these circumstances, that "impartial judgment [was] not reasonably possible." Judge Gorcyca exhibited impartial and appropriate justice and came to a reasoned and principled decision.

Judge Gorcyca's words on the record, even if intemperate to a degree, do not represent persistent or habitual conduct and further do not prejudice the administration of justice. Despite the fact that given another opportunity Judge Gorcyca would use different words, the words she used do not rise to the level of misconduct.

6. It is internally inconsistent to recognize that Judge Gorcyca did not make an intentional misrepresentation to the Commission, but then hold that, for purposes of assessing costs, she misled the Commission.

MCR 9.205(B), in pertinent part, allows the Commission to recommend and this Court to assess "the costs, fees, and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court." (Emphasis added). The intent of this provision is to "protect governmental resources, especially when a JTC investigation requires the expenditure of additional resources because of a judge's acts of misrepresentation." Supreme Court of Michigan. ADM File No. 2004-60. (Mich. Dec. 14, 2005) (Corrigan, J., concurring); *Staff Comment to 2005 Amendment of MCR 9.205*, at 584 (Thomsen Reuters, 2016 edition) (emphasis

added). The provision “preserve(s) **the integrity** of the judiciary.” *Id.*, at p. 585 (emphasis added).

The Commission, in its *de novo* review of the evidence appropriately determined that Judge Gorcyca **did not** make any misrepresentation to the Commission’s investigators, the Master, or the Commission, and found specifically that her statements about her *belief* did not constitute intentional deception:

Selective memory does not equal falsehood; incorrect memory does not equal falsehood; imprecision in expression does not equal falsehood; even an answer that one chooses to disbelieve does not equal a falsehood.

(**Appendix 24**, Recommendation, at p. 20).

Judge Gorcyca was very careful in her answer to the 28-day letter to be precise. Her statement to the Commission’s inquiry as to what she *believed* while making the complained-of gesture was very specific. It was phrased in a careful manner to “apprise the commission . . . about the factual aspects of the allegations,” MCR 9.207(D)(1), and intended to fulfill Judge Gorcyca’s obligation to comply with the Commission’s request. MCR 9.208(B).

Judge Gorcyca, however, apparently cooperated too much. Despite the direct finding that Judge Gorcyca made no misrepresentation in her response to the 28-day letter, to the answer, or to the allegations at trial, she was nevertheless found to have “misled” the investigation and was assessed costs. The Commission, instead of accepting the explanation of Judge Gorcyca’s belief for what it was, found instead they it would have preferred “the simple answer --- ‘I don’t remember what was in my mind at the time’”

The Commission objected not to what Judge Gorcyca's answer was – which it determined was not a misrepresentation – but objected instead that she did not answer in the fashion that it wanted, and without further exposition. The Commission then opined that the statement made by her required a hearing to determine its truth. This argument cannot stand up to scrutiny where the Examiner presented no evidence whatsoever about Judge Gorcyca's memory and no evidence concerning Judge Gorcyca's objective belief at the hearing in this matter.¹¹ Further, the Examiner moved for and the Master granted Examiner's motion requesting the exclusion of character witnesses on behalf of the Judge that would have testified about her propensity to tell the truth.

It is clear that the Examiner never intended to present evidence of Judge Gorcyca's belief, because in every pleading and at every turn, the Examiner simply, inappropriately, and disingenuously "edited out" and ignored that Judge Gorcyca was speaking from her belief. This is evident from the Formal Complaint, at paragraph 53, where the Examiner alleged:

53. In her October 23, 2015 answers to the Commission's 28-Day Letter, Respondent stated that when she was making circular motions at her right temple when referring to LT she was not indicating that he was crazy but was referring to the forward movement he would make in therapy.

¹¹ It was clear at the hearing that the Examiner did not believe that Judge Gorcyca had no recollection of making the gesture. In this regard, Ms. Rynier argued:

And then there is the circular motion that Judge Gorcyca had made at her temple, which now she claims, I don't remember it. You're a judge. You're on the bench. You don't remember what you do on the bench?

(**Appendix 19**, Hearing Transcript, at p. 359, lines 1-4).

The conclusion is that the Examiner would have proceeded to hearing regardless of whether Judge Gorcyca indicated she did not remember the gesture. Ms. Rynier simply didn't believe that Judge Gorcyca did not remember.

It was also evident in the Examiner's arguments to the Master (**Appendix 19**, Hearing Transcript at p. 360, lines 1-6), in his brief to the Commission (**Appendix 22**, Pleading Index 34, at p. 30) and in oral argument before the Commission (**Appendix 23**, October 10, 2016 transcript, at p. 51, lines 24-25). The necessity for a hearing of this Complaint was not brought about by Judge Gorcyca answering that she believed she was referring to therapy, but rather by the Examiner's refusal to acknowledge what Judge Gorcyca said, repeatedly misquoting it, and the Examiner's own desire to advance the allegation of misrepresentation with a "gotcha" allegedly drawn from Judge Gorcyca's response to the 28-day letter..

The Commission recognized that Judge Gorcyca did not make a misrepresentation; it was only the Examiner's statements that confused the issue and "required" a hearing. What Judge Gorcyca said in response to the 28-day letter never changed and was never contradicted at trial or before. Judge Gorcyca's statements did not mislead the Examiner, the Master or the Commission in any way. The Examiner misled the Master (and the public in general) by mischaracterizing Judge Gorcyca's statements.

Additionally, Judge Gorcyca's answer to the 28-day letter was not material to the allegations of misconduct. The Commission authorized an investigation into Judge Gorcyca's conduct of June 24, 2015. Even though the gesture occurred on that date, and itself was material to the allegations, Judge Gorcyca's belief about what she meant was formed later, after she viewed the video. Judge Gorcyca specifically took responsibility for what the gesture appeared to be, even if she could not remember the gesture specifically. What she was thinking at the time, or what she believed she

meant, had no bearing whatsoever on whether she made the gesture on June 24, 2015. There was no need to conduct a hearing in this case to attempt to prove an immaterial “fact.”

Finally, a finding by the Commission that even in light of truthful statements Judge Gorcyca misled the investigation is a distinction that has never seemingly been made in any other judicial discipline proceeding. The award of costs where no misrepresentation has been found has never occurred before in Michigan Judicial Tenure proceedings.¹² The Commission appears to distinguish between “misrepresentation” and “misleading,” but gives no guidance on the distinction. Respondent offers that to the extent such a distinction is made, it is a distinction without a difference.

Random House Publishers sets forth the definition of mislead on its website as:

Mislead, verb (used with object), misled, misleading.

1. to lead or guide wrongly; lead astray.
2. to lead into error of conduct, thought, or judgment.

Mislead, verb (used without object), misled, misleading.

3. to be misleading; tend to deceive:

Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc., <http://www.dictionary.com/browse/mislead> (accessed: December 5, 2016). Using this common definition of “misleading” leads a reasonable reader to conclude that it is virtually indistinguishable from “misrepresentation.” It is inconsistent to find one without the other as both

¹² See, *In re Nettles-Nickerson*, 481 Mich 321 (2008), *In re Justin*, 490 Mich 394 (2012), *In re James*, 492 Mich 553 (2012), *In re Adams*, 494 Mich 162 (2013), *In re McCree*, 495 Mich 51 (2014), *In re Church*, 498 Mich 856 (2015). In each of these cases, representing all of the awards for costs since the amendment of the court rule, the judge was found to have actually made actionable misrepresentations.

seemingly require a wrongful intent to misdirect. If no misrepresentation was made, no misleading statement was made. No costs should have been assessed against Judge Gorcyca for her truthful statements.

It is also interesting to note that the proposed amendments to the court rules concerning Judicial Tenure proceedings do away with this seemingly redundant language altogether. The new proposed rule at 9.246(B)(2) reads, in pertinent part:

In addition to costs imposed under subsection (B)(1), a respondent may be ordered to pay the actual costs, fees, and expenses incurred by the commission in prosecuting the complaint only if the respondent engaged in conduct involving fraud or deceit, or intentional misrepresentation to the commission, the commission's investigators, the master, or the Supreme Court.

Appendix 29, *Proposed Amendments of Rules 9.200 et seq. of the Michigan Court*

Rules, Michigan Supreme Court, ADM File No. 2015-14. (Mich. Aug 10, 2016). To allow the distinction that the Commission has made to stand would result, if these proposed rules are adopted as expected, in Judge Gorcyca being the only judge in the state subjected to this new standard: a standard that Judge Gorcyca had no notice of given the plain language of the rules and prior proceedings before this Court.

Where a judge has been given no notice of the standard for imposing costs, the judge should not be made to pay them. . . . In this case, respondent should not be required to pay the costs of his prosecution because he had no notice of the standards for imposing them.

We have opened an administrative file to consider the constitutional issue and the standards to be applied in the event costs can be assessed in these matters. ADM 2004-60.^[13]

In re Noecker, 472 Mich 1 (2005).

¹³ As shown in Justice Corrigan's opinion accompanying MCR 9.205, costs were originally contemplated in situations where costs were incurred because of a "judge's misrepresentations" and to "preserve the integrity of the judiciary." The assessment of costs in this matter does not address either of these goals. *Infra*, p. 37.

The Commission erred in recommending an award of costs against Judge Gorcyca.

7. The Judicial Tenure Commission misapplied the *In re Brown* factors and an appropriate application of the factors should result in a finding of minimal sanctions, if any.

In *In re Brown*, 461 Mich 1291 (2000), the Michigan Supreme Court held that “[t]he most fundamental premise of the rule of law” was that judges who committed equivalent infractions be treated in a like manner. *Id.*, at 1292. The Court held that it was incumbent upon the Commission to treat “equivalent cases” in an equal manner and “unequivalent cases” in a proportionate manner. *Id.* The Court remanded the *Brown* matter to the JTC with instructions to craft standards for application in judicial misconduct matters. In doing so, the Supreme Court set forth several minimum standards to be considered by the Commission. When these standards are applied to Judge Gorcyca’s conduct, it becomes apparent that, even if she were subject to discipline, any such sanction should be minimal.

The Supreme Court stated that as a rule, everything else being equal:

- (1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct;
- (2) misconduct on the bench is usually more serious than the same misconduct off the bench;
- (3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety;
- (4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does;
- (5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated;

- (6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery;
- (7) misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.

In re Brown, at 1292-93. Since *Brown* was decided, these weighted guidelines have been consistently applied by the Commission and the Supreme Court to judicial misconduct matters. Because of these clear guidelines, it is surprising that the Commission, purportedly trying to apply these standards, would then recommend a thirty-day suspension of Judge Gorcyca in this matter.

Judge Gorcyca's conduct was not corrupt, did not thwart the cause of justice, did not delay the administration of justice and did not constitute any crime against the State. When the *Brown* factors are correctly applied it is clear that Judge Gorcyca's conduct merits no discipline whatsoever, or at the very most, a censure at the lowest end of the scale:

- (1) Judge Gorcyca's demeanor and conduct in this matter was no more than an "isolated instance of misconduct" in her eight year career on the Circuit Court bench. **Less serious than a pattern or consistent practice of misconduct.**

It is interesting that the Commission, though agreeing with Judge Gorcyca that there was no overt pattern of misconduct during her eight-year career, nevertheless opined that this isolated instance might be the *beginning* of a pattern that was not yet apparent. This Court should hold it to be inappropriate to consider speculative, potential future conduct in weighing the *Brown* factors.

(2) Judge Gorcyca's conduct occurred on the bench. **"Usually more serious" than conduct off the bench.**

(3) Judge Gorcyca's conduct was not prejudicial to the administration of justice. Judge Gorcyca was within her discretion, given admitted contempt, to conduct a contempt hearing. **Less serious than conduct "that is prejudicial to the actual administration of justice."**

The Commission inappropriately characterizes Judge Gorcyca's conduct as "bullying" and/or "targeting" children, and such hyperbole, especially in light of no analysis or findings that Judge Gorcyca acted in bad faith or without due diligence should not be countenanced by this Court. Judge Gorcyca only exercised her contempt power after she had attempted many lesser sanctions to attempt to coerce the children to comply with her orders. By slowly and carefully considering lesser sanctions prior to holding the children in contempt, Judge Gorcyca was actually administering appropriate justice, not acting in prejudice to it.

Her demeanor notwithstanding, the contempt hearing was a reasonable and principled course of action in the face of violation of parenting time orders.

(4) Judge Gorcyca's conduct did not create an appearance of impropriety. **Less serious.**

(5) Judge Gorcyca's conduct occurred during a single hearing and was at worst spontaneous. **Less serious than misconduct that is premeditated or deliberated.**

(6) Judge Gorcyca's conduct did not undermine "the ability of the justice system to discover the truth of what occurred in a legal controversy or to reach the most just result in such a case." Her ruling in the contempt proceedings did not implicate the decision, just or otherwise, of the underlying case, and was ancillary to the matter. Her ruling in the contempt matter was a reasonable and principled result in the face of five years of thwarting the orders of the court. **Less serious than conduct that undermines the justice system's truth-seeking process.**

The Commission concern regarding the courts' "failure" to respond to the children's allegations of violence fails to recognize the record evidence that Judge Gorcyca had held a full evidentiary hearing on these allegations on March 23, 2015, some months before and found insufficient proof of the allegations. It also fails to take into account that Judge Gorcyca had advised RT, that very day, that there was a lack of evidence for the allegations. It cannot fairly be said that Judge Gorcyca ignored these allegations, or that she failed to take them into account.

(7) The Examiner and Judge Gorcyca agree that there is no evidence that Judge Gorcyca's conduct was based on any consideration of class of citizenship. **Less serious.**

Again, Judge Gorcyca objects to the hyperbolic use of the characterization that she at any time "targeted" children. Suffice to say, this Brown factor is not implicated by Judge Gorcyca's conduct.

Judge Gorcyca's actions compare favorably to several matters decided by the Commission and the Supreme Court. For instance, in *In re Post*, 493 Mich 974 (2013), a judge admitted abusing the contempt power when holding a defense attorney in contempt for asserting his client's Fifth Amendment right against self-incrimination, and further admitted making improper comments to the defense attorney on the record. Even in light of his admission that he abused the contempt power, the Commission recommended only a 30-day suspension, which the Supreme Court adopted.

In *In re Hocking*, 451 Mich 1 (1996), the Commission also recommended a thirty-day suspension after it found that a respondent had *twice* been rude and discourteous to two attorneys (in separate records), had made improper remarks to justify a criminal

sentence and had held one attorney in contempt during an “caustic and abusive” exchange on the record.

Recognizing that Judge Hocking had “clearly lost his temper,” the Supreme Court also recognized that “every angry retort or act of discourtesy during the course of a proceeding does not amount to misconduct.” *Hocking*, at 16. The court found that despite the “caustic and abusive” exchange, the judge had not abused his contempt authority. Ultimately, the Supreme Court rejected the Commission’s recommendation of a thirty-day suspension and instead, based on Judge Hocking’s demeanor in the latter exchange, imposed a three-day suspension.

This case is similar to *In re Redmond*, 480 Mich 1227 (2008). (**Appendix 26**). In that matter, Judge Norene Redmond held a hearing for a criminal defendant during which she set a \$5,000/10% bond. After the defendant’s son was overheard in the court hallway to refer to Judge Redmond as an “asshole,” Judge Redmond *sua sponte* recalled the case and increased the bond, without the defendant present, to \$25,000/cash or surety. In another case, Judge Redmond imposed an excessive \$750,000 bond on an offense with a maximum sentence of 5 years/\$10,000 fine. In yet a third case she set an excessive \$1,000,000 bond for the defendant. Finally, the judge also imposed an excessive sentence on a noise complaint without disclosing her relationship with the complainants. The Supreme Court imposed a public censure.

Judge Gorcyca's conduct in holding a contempt hearing does not rise to the level of *Post* or *Hocking*. Judge Gorcyca did not create or bring about the behavior of the children in ignoring her orders. She did not bait them into their contemptuous behavior. She did not order them to forgo their rights and then hold them in contempt for not doing

so. The children voluntarily ignored her orders and Judge Gorcyca had no other option left but to appoint attorneys and hold the hearing, having tried everything else before.

Unlike in *Redmond*, she was not retaliating against a person for a perceived personal slight by a third party. She did not hold the hearing because she was insulted or because she was called names. She held a contempt hearing because persons under her jurisdiction refused to follow the court's orders. This was well within her discretion and was not misconduct.

In light of these cases, it would appear that the Commission is excessive in its recommendation of a thirty-day suspension. At worst, Judge Gorcyca's conduct, if found by this Court to constitute misconduct, warrants no more than a public censure.

This is especially so where it occurred in an isolated incident that was not reflective of Judge Gorcyca's eight-year, exemplary service to the Oakland County Circuit Court and its constituent community. Before the Commission, the Examiner cites to "international media coverage and international outrage" (**Appendix 22**, Brief, pp. 37, 38) that was not introduced as evidence in the hearing this matter. In fact, Judge Gorcyca has received more national praise than outrage as shown by the large number of emails, letters and cards received recognizing that this case has brought attention to the issue of parental alienation and helped other families. (**Appendix 30**).

She is supported whole-heartedly by the attorneys who practice before her, who not only issued press releases in her support (**Appendix 31**), but also packed her courtroom after the Master's recommendation was issued to express their disagreement with his conclusions. (**Docket No. 9** – videos filed by Commission and noted filed in L-drive > Docket). This outpouring of support followed the unprecedented attendance of a

host of judges and attorneys from around the state at the hearings before both the Master and the Commission.

Judge Gorcyca has a well-deserved and well-earned reputation as a caring and superior jurist with the support of the entire family bench and bar. A suspension of any sort, preventing her from performing her elected duties, would be an injustice.

RELIEF REQUESTED

For all of the reasons stated above, this Court should reject or modify the Commission's Decision and Recommendations for Order of Discipline, and dismiss this matter without any sanction imposed.

In the alternative, this Court should modify the recommendations and impose no more than a public censure.

Respectfully submitted,

VANDEVEER GARZIA, P.C.

Dated: December 22, 2016

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Dated: December 22, 2016

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VERIFICATION

The Honorable Lisa Gorcyca verifies that the matters stated in the attached Petition are true to her knowledge and belief, except as to those matters which are stated on information and belief, and as to those matters, believes them to be true.

Dated: December 22, 2016

/s/ Honorable Lisa Gorcyca
HONORABLE LISA GORCYCA (P47882)